

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

AMERICAN RED CROSS BLOOD SERVICES-
NEW ENGLAND REGION

Employer

and

Case 1-RC-22028

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, REGION 9A, AFL-CIO

Petitioner

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1] **DECISION AND DIRECTION OF ELECTION**

The Employer is a corporation, chartered by Congress, with facilities located in Maine, Vermont, New Hampshire, Massachusetts, and Connecticut. The Employer's Manchester, New Hampshire facility, where it collects and distributes blood and blood products and performs related services, is the only location at issue in this case. The Petitioner seeks to represent a unit of employees that is identical to a unit found appropriate for the same facility in a Decision and

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Direction of Election that issued on April 22, 2005, in Case 1-RC- 21895. The Employer contends that the only appropriate unit is one that would include 33 additional employees in 10 additional classifications. Eight of these 10 classifications were previously excluded in the

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aforementioned Decision (telerecruiters, bookers, administrative assistants, receptionists, schedulers, volunteer coordinators, apheresis coordinators, and coordinator facility services lead),

while the other two classifications were excluded by stipulation during the prior proceedings (i.e., [4]

registered nurses, as professionals, and collection specialist/LPNs [charge], as supervisors).

As an initial matter, the Petitioner opposes the inclusion of the eight positions that were already litigated and expressly excluded in the prior Decision. The Petitioner also objects to the inclusion of registered nurses (RNs) on the basis that they are professional employees, while the Employer takes the position that, in the circumstances present here, RNs are non-professional employees and should be included in any unit found appropriate. Finally, the Petitioner claims that charge nurses, whether RNs or LPNs, are statutory supervisors and, for this reason, should be excluded from the unit, while the Employer contends that charge nurses are not supervisors and argues that they should be included in any unit found appropriate.

I have considered the evidence from the hearing, the arguments advanced by the parties on each of the issues, and my prior unit determination involving this Employer (and a different Petitioner) [5] in Case 1-RC-21895. The parties have stipulated that the Employer is a health care institution within the meaning of Section 2(14) of the Act, as I concluded in my earlier Decision in Case 1RC21895. Further, as in my earlier Decision, I have applied a “pragmatic or empirical” community of interest analysis in this case, based upon which I conclude that the smallest appropriate unit includes all non-professional Manchester employees directly involved in the

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Employer’s blood drives. I further find that the petitioned-for unit is an appropriate unit because it includes all non-professional employees directly engaged in the Employer’s blood drives, and excludes registered nurses, who I find meet the definition of professional employees under the statute. Finally, I do not find it necessary to determine whether the Employer’s charge nurses are statutory supervisors. The great majority of the individuals who serve as charge nurses are registered nurses and, thus, are excluded from the unit found appropriate by virtue of their professional status. However, with respect to the four LPNs who serve as charge nurses, because the record is unclear as to the degree of independent judgment exercised by them, as well as the amount and overall impact of charge nurse input into discipline and performance evaluations that are subsequently issued by team supervisors and higher level management, I shall permit these individuals to vote under challenge.

I. Overview of the Employer’s Operations and Structure

The New England Region works under the umbrella of the American Red Cross. The National American Red Cross office is located in Washington, D.C. The New England Region, which includes all of Maine, Vermont, New Hampshire, Massachusetts and Connecticut, collects blood

and provides it to numerous hospitals throughout the New England Region. The Employer has facilities in Burlington, Vermont; Bangor and Portland, Maine; Manchester, New Hampshire; Springfield, Worcester, and Dedham, Massachusetts; and Fairhaven, Connecticut. The Region's main corporate headquarters is located in Dedham, Massachusetts, where all divisions supporting the Region are located.

The Employer's fixed facilities, like the one in Manchester, New Hampshire, are called donor rooms, where donors come during the day to donate blood. "Mobiles" are donor events conducted through sponsors, such as an organization or company, working in partnership with the Employer, which provide a place and time to have donors give blood. A mobile is sent to the sponsor's site with staff and supplies and the site is set up to accept donors and collect blood.

In the performance of its operations, the Employer collects whole blood, donor apheresis, and double red cell donations at its Manchester facility and at offsite blood drives. Donor apheresis (also known as pheresis) is an automated type of donation in which a donor's blood is put through a centrifuge machine, allowing individuals to donate platelets while simultaneously getting back all of their red blood cells and their plasma. Double red cell donations are a type of pheresis procedure in which red blood cells are collected rather than platelets. After donated blood is collected, Manchester employees maintain the blood by icing and re-icing it until the blood can be sent to the Employer's Vermont or Dedham laboratories. Manchester employees also distribute the blood and blood products to New Hampshire hospitals when it arrives from the Employer's Dedham facility.

II. Scope of the Unit A.

Facts

Maureen Baldini is the Director of New Hampshire Operations and, as such, is responsible for the [7] entire Manchester facility. Four Team Supervisors (Nancy Grant, Robert Tibbetts, Janet Ostrum, and Linda Chevalier) report directly to Baldini, as do four Compliance Training Specialists (Kathleen Becht, Elizabeth Brown, Suzanne Daily, and Mor Jane Iller). Telerecruiting Supervisor Ellen Wlodyka reports to Recruitment Manager Ellin O'Hara, who, in

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turn, reports directly to Baldini.

All of the Employer's employees are hourly paid, except for the account executives and donor recruitment representatives, classifications that are not sought by either party in this case. An

incentive or bonus plan is available to recruitment staff, except for the volunteer coordinator and the administrative assistant. All of the Manchester employees have the same fringe benefits and are subject to the same disciplinary rules, employee manual, and performance review procedures. All employees have mailboxes and they share a locker area and a break room at the Manchester facility.

There are several classifications of employees who work primarily out of the Manchester location itself, while other employees work off-site on mobile drives. Many of the employees working out of the Manchester facility work directly with blood donors, but others are involved in tasks that are more administrative or supportive in nature. With the exception of collection specialist/ LPN (lead) and RNs, all of the employee classifications at issue were dealt with in detail in my earlier Decision; thus, I will focus primarily on what changes, if any, have occurred during the intervening year.

1. Recruitment Employees (14)

The Petitioner does not seek to represent any of the classifications involved in recruitment, while the Employer urges the inclusion of all four of these classifications in any unit found appropriate.

Recruitment staff positions fall under OSHA Category III because the incumbents are not exposed to blood or blood components and/or human body fluids or tissue samples in the course of performing their duties. All of these employees work out of the Manchester facility and are organizationally located under Recruitment Operations. The administrative assistant II, the booker, and the volunteer coordinator are directly supervised by the Manager of Recruitment Operations. The telerecruiters, however, report to a Telerecruiting Supervisor who, in turn, is supervised by the Manager of Recruitment Operations.

(a) Administrative assistant II (1)

The administrative assistant, who provides support to the recruitment team, works from 8:00 a.m. to 4:30 p.m., Monday through Friday.

(b) Booker (1)

A single booker is responsible for actually booking blood drives for the Manchester facility and for ensuring that there is adequate staffing to handle the blood drives scheduled on any given day. Once a drive is booked, the information is entered on the Employer's nationally networked computer database. The booker reports to the manager of recruitment operations and works Monday through Friday on a regular 8:00 a.m. to 4:30 p.m. schedule.

(c) Telerecruiters (previously referred to as telemarketers) (11)

The Employer uses 11 telerecruiters to attract donors to drives. Telerecruiters contact individuals who have donated in the past to advise them of upcoming drives and they try, if possible, to schedule them for a donation. In addition to making reminder calls to donors when the Employer is going to be in their area, they also perform first-time donor call-backs to thank them for participating in the drive. These employees work part-time from Sunday through Thursday. While some of the telemarketers work 4:00 p.m. to 9:00 p.m., most work 5:00 p.m. to 9:00 p.m.

(d) Volunteer coordinator (1)

A single volunteer coordinator is responsible for recruiting, recognizing, and scheduling [9] volunteers who assist the Employer. She attends most of the Manchester facility blood drives. Her hours are usually 8:00 a.m. to 4:30 p.m., although she sometimes works in the evening or on a weekend in order to attend a mobile blood drive.

2. Administrative Employees (7)

The Petitioner does not seek to represent any administrative classifications, while the Employer urges the inclusion of all three of these positions in any unit found appropriate. The three positions listed below are all designated as OSHA Category III positions because the incumbents of these positions are not exposed to blood or blood components and/or human body fluids or tissue samples in the course of performing their duties.

(a) Schedulers (2)

The two schedulers who work for the Employer report directly to Baldini and are responsible for creating a staff schedule for appropriate coverage of the blood operations at the Manchester facility as well as at the mobile drives. They schedule the collection specialists, the collection specialist/LPNs, the registered nurses, and the mobile unit assistants (MUAs), ensuring that staffing is adequate for upcoming drives. Employees who cannot make it into work contact one of the schedulers to provide notification. Thus, although the schedulers generally work 8:00 a.m. to 4:30 p.m. each day, they also work on-call hours from 8:00 p.m. to 10:00 p.m. at night and during the two hour period prior to the earliest start time for any staff person in the morning.

(b) Receptionists (2)

Two part-time receptionists, who report to Baldini, work from 8:00 a.m. to 4:30 p.m. In addition to answering the phone and greeting people who enter the building, the receptionists provide some additional clerical support and hand out paychecks. The receptionists are also responsible for preparing containers, called lab coat bins, with lab coats that the mobile drive staff will wear at mobile blood drives. Once filled, these lab coat bins are taken to mobile blood drives by the mobile unit assistants (a position that the parties have stipulated should be included in any unit found appropriate).

(c) Apheresis coordinators (3)

The apheresis coordinator position is an administrative position responsible for providing administrative, clerical, and recruitment support for the apheresis unit located in Manchester. The three incumbents of this position report to Team Supervisor Nancy Grant, who supervises all

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the employees involved in apheresis collection in Manchester. There is a desk area in the apheresis department and, upon arrival, apheresis donors check in with the coordinator. After a donor's history is taken, the donor then moves to the apheresis area. Apheresis collection only occurs in the Manchester facility.

3. Maintenance Employee (1)

The Petitioner does not seek to represent the coordinator facility services-lead position, while the Employer urges inclusion of this position in any unit found appropriate.

The facility coordinator-lead person, whose main role is to care for the physical premises, works out of the Manchester facility and reports directly to Baldini. The incumbent has performed this work for many years and, thus, he operates rather independently. He works a regular shift of 5:00 a.m. to 3:00 p.m., depending upon the needs of the Employer at any given time. For the most part, this employee performs light maintenance work in the facility, maintains the Employer's computers (including downloading of information), and is responsible for basic maintenance work on the Employer's vehicles. When work is beyond the employee's abilities, it is contracted out. Because the incumbent possesses a commercial driver's license (CDL), he can fill in for mobile unit assistants (MUAs) by performing the driving portion of the MUA job when needed. However, he serves in this capacity very infrequently. The incumbent also assists MUAs by helping to load supplies on trucks in the morning several times a month. Baldini did not know whether the incumbent was properly certified to perform the full range of MUA duties. This position is within OSHA Category II because the incumbent is "occasionally, on an unplanned

basis, required to work under conditions where the potential exists for... contact with blood or blood components and/or human body fluids or tissue samples.”

4. Employees Directly Involved in the Collection of Blood/Blood Products (63)

The Petitioner seeks to represent all non-professional employees in classifications directly involved in the collection of blood or blood products. It does not seek to represent collection specialist/LPNs (lead), who the Petitioner argues are supervisors, or RNs, who the Petitioner claims are professionals. The Employer’s position is that all of the classifications listed below should be included in any unit found appropriate.

All of the employees directly involved in the collection of blood or blood products are supervised by either Compliance Operations Training Specialists or by Team Supervisors. In addition, all employees within this grouping fall within OSHA Category I because they “work under conditions where the potential exists for the incumbent[s] to make contact with blood or blood components and/or human body fluids or tissue samples as a result of splashes, spills, and/or needle sticks.” The employees are required to wear lab coats during the performance of their duties.

As noted above, donors can give blood or related blood products at the Manchester facility drives or at mobile sites. Collection department employees at blood drives typically work on a team consisting primarily of MUAs (mobile unit assistants) or donor center assistants (DCAs), collections specialists, and a charge nurse. The MUAs and DCAs perform the same basic function once a drive has begun, but much of the MUAs’ job is involved with transporting materials and supplies to an off-site drive location, something the DCAs, who work at the Manchester facility, do not have to do.

Staffing for each drive depends on the goal, expressed in terms of a specific number of pints of blood, set for that particular drive. Employees assigned to mobile drives include mobile unit [11]

assistants and the collections staff. The collections staff is comprised of employees who draw blood from the donors and includes collection specialists, and/or collection specialist/LPNs, and RNs. The LPNs working a drive perform the same work as the collection specialists, unless they are serving as the charge nurse for a drive. The charge nurse, who is responsible for all phases of the drive, can be an RN, LPN, team supervisor, or compliance training specialist.

(a) Mobile unit assistants (MUAs) (8)

There are eight MUAs working out of the Manchester facility. The MUAs and the collections staff each have their own defined responsibilities on a mobile drive. The MUAs are responsible

for transporting all of the supplies and materials needed to conduct the blood drive at an off-site location. While three of the MUAs have a commercial drivers license (CDL), this is not a job requirement, but a CDL license is necessary in order to drive one of the Employer's vehicles, the

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mobile donor room bus. The MUAs must adhere to Department of Transportation (DOT) rules for drivers, including taking a break after ten (10) hours of work and filling out a DOT log. Before an MUA leaves the Manchester facility, he will gather all the necessary supplies, make up ice packs, and ensure that whatever is required for the off-site drive is ready. The equipment, which includes computers, donor beds, tables, supplies, and canteen items, is stored in trucks. The MUA determines the appropriate number of trucks needed for a drive. After loading a vehicle, the MUA drives it to the blood drive location.

Once at the off-site location, the MUA unloads the truck and assists in setting up the drive by bringing in the donor beds and supplies. The MUA unloads the truck alone, but as the supplies and equipment are unloaded, the collections staff is responsible for setting up their work areas, as will be addressed below. While the collection employees prepare for the arrival of donors, the MUA is required to record information regarding the sealing machine and blood bags for quality control purposes. The MUA is responsible for setting up the MUA area(s) used to accomplish the work that he performs during a drive. This can be either a single area, with a table that is divided into two parts, or two separate areas.

The MUA is responsible for the blood packs that are used to collect units of blood during a drive. Each blood pack, which includes a bag and several tubes, is assigned a separate number. The MUA places the blood pack's number on each of the tubes as well as on the bag that belongs with a particular blood pack. The same number appears on a UPC sticker, which the phlebotomist applies to the donor's blood donation record. A volunteer or collection specialist then delivers the donor record card, along with the donated unit of blood, to the MUA table. The MUA is responsible for checking to ensure that the correct number appears on the donor record, the bag, the tubes, and any other tags or forms that are associated with that unit of donated blood. The MUA disposes of the needle packing, seals the bag, and places the blood on ice in the transporters. The MUA then puts the transporters in a trunk. The blood donation record is

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passed to the charge nurse, who does the final review on that form. The MUA continues to number blood packs throughout the drive.

If there are two MUAs on a drive, they can cover for each other during breaks or lunch periods. However, if there is only one MUA at the drive, he may not be able to take a break unless the charge nurse assigns another staff person at the drive to cover for him during these brief periods.

The MUAs are the last staff members to leave once a drive has been completed. The MUAs are responsible for packing up the supplies and equipment and loading them onto the Employer's trucks. While other employees are able to go directly home from a drive, the MUAs must return to the Manchester facility in order to unload the equipment and the donated blood. The MUAs must also fill out certain paperwork, which can take up to another 45 minutes. There are about eight to ten collection specialists who have been cross-trained in these post-collection procedures so that they can perform them as needed. An example of when this might occur is if the MUA has to stop working in accordance with the DOT 10-hour break rule.

The MUAs report to Compliance Operations Training Specialist Kathy Becht, as do three collection specialists, one RN, two DCAs, and the MUA/facility assistant (discussed below). Although these are the individuals who report to Becht, they do not always work together as a team. Rather, the teams can vary, though the other collection specialists all report to four different team supervisors. The MUAs receive a schedule that lists the scheduled drives, locations, and team coverage. This schedule is also posted on bulletin boards.

MUAs can fill in for DCAs and DCAs can fill in for all of the functions the MUAs perform, with the exception of driving. As noted below, the MUA/facility assistant was promoted from the MUA position. The coordinator facility services-lead was an MUA before he was transferred into his current position about ten years ago.

(b) Mobile unit assistant/facility assistant (1)

This is a relatively new position at the Manchester facility that is currently filled by an employee who had been an MUA before being promoted to this position. The incumbent reports to Compliance Training Specialist Kathy Becht, as do the MUAs. He is required to maintain his MUA certification because he serves as an MUA backup a couple of times a month, as needed. In addition, this employee has some responsibilities in connection with building and vehicle maintenance. When performing maintenance duties, the employee receives "oversight" from the facility coordinator-lead (discussed above). The job is an evening position, generally from 2:30 p. m. to 11:00 p.m., because one of the primary responsibilities of this position is to ensure that any of the blood that has been collected earlier in the day, and placed on ice by the MUAs or the DCAs, gets re-iced again later in the evening before it is shipped to the lab. The MUA/facility assistant is also expected to provide support to the MUAs when they come back from a drive. If, for example, an MUA needs time off between shifts, the MUA is supposed to pull the truck up and let the MUA/facility assistant unload the truck.

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(c) Technician instructor (1)

The technician instructor position can be filled by either a collection specialist or a collection specialist/LPN. The technician instructor can be involved in the training of collections specialists, collection specialist/LPNs, and RNs, and may train the MUAs or DCAs as well. The technician instructor is the primary trainer when there is training to be done, but, when there is none, the instructor works in the role of collections specialist or collection specialist/LPN. The single technician instructor reports to Suzanne Daily, one of the compliance training specialists.

(d) Donor center assistants (DCAs) (2)

The DCAs perform the same function as MUAs, but because they work at the Manchester location, rather than at off-site blood drives, they are not called upon to drive or to load or unload equipment from trucks. They are responsible, however, for bringing the supplies to the donor center for a blood drive. They have the same supervisor as the MUAs and, except for the driving function, can fill in for them as needed.

(e) Collection specialists and Collection specialist/LPN (non-charge) (40)

There are 40 collection specialists, including one per diem and four collection specialist/LPNs (non charge), all of whom perform the same work, i.e. their primary responsibility is to draw blood from donors. Collection staff members collect blood in a variety of ways. At the mobile locations, individuals may donate whole blood by phlebotomy or they may donate double red cells. At the Manchester facility, donors may also donate blood components by apheresis. Although one collection specialist and two collection specialist/LPNs have been trained for, and are dedicated to, apheresis collection, they could be assigned to work on other drives, as needed. In contrast, other collection specialists would not be able to work in apheresis collection unless they were first trained to perform this function. Collection specialists report to one of several team supervisors, but the three collection staff dedicated to apheresis are specifically assigned to report to Team Supervisor Nancy Grant.

In addition to performing the blood collection role during blood drives, collection specialists set up the health history area. This includes placement of a table, chairs, and screening, as well as putting out blood pressure cuffs and other supplies and equipment needed for obtaining the health

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history of donors. Collections specialists also set up the phlebotomy area, where the donor beds are located. The beds are arranged in two-bed units so that each phlebotomist can work with two donors at a time. Each area has a chair on wheels, with plastic containers that hook onto either side of the chair that are called pods. The pods are used to store all of the supplies that are used during phlebotomy. These employees are also responsible for setting up the Genesis Mixer, a scale on which the blood bag sits to allow the blood to be measured and mixed as it is being

collected. In addition to drawing blood, collection specialists complete part of the donor form and place a sticker on the upper right-hand side of the form before passing the form, along with the blood collected from the donor, to a MUA or DCA.

Before the drive begins, collections staff sets up the registration area and the recovery area, with beds and supplies for donors who may not feel well following the donation. Members of the collections staff also perform quality control on the equipment and keep track of materials and supplies that are used in connection with the drive.

(f) Collection specialist/LPN (charge) (4)

These employees perform the same work as their non-charge counterparts, except that they are required to serve as charge nurses during blood drives and, as such, are responsible for the overall operation and success of the drive. This entails ensuring that employees adhere to required procedures and that donors are processed properly, as well as working with the sponsor and the collections staff to address any issues or problems that may arise during the drive. Only a charge nurse may call “911” in the event of a serious reaction or a medical emergency during a drive.

In the course of performing their duties, charge nurses may counsel staff members for some forms of misconduct, e.g., raising his/her voice when speaking to a donor, but they do not issue written discipline, nor do they suspend or terminate employees. If an issue arises during a blood drive that warrants discipline, charge nurses are required to step in and take whatever immediate action may be necessary to handle the situation (e.g., send an employee home who appears to be intoxicated) and then report the incident to a team supervisor, to a compliance specialist, or to Director of New Hampshire Operations Baldini. The charge nurse is also expected to provide documentation of any such incident so that it can be used in the decisionmaking process. If disciplinary action follows, this documentation could end up in an employee’s personnel file. Charge nurses are not involved in hiring decisions and they are not authorized to fire employees. The record makes reference to “charge nurse meetings,” at which the performance and conduct of staff members are discussed, but it is not clear who else is in attendance at these meetings, how frequently they occur, or what weight is given to the input provided by charge nurses during these sessions.

Charge nurses prepare assignment sheets that outline what work each staff member will do and for what period of time. However, all of the collection specialists, collection specialist/ LPNs, and staff nurses rotate through these assignments during the drive. Because charge nurses are in a position to observe employees throughout the year, they provide input to the supervisory staff members who actually complete annual evaluations on employees. Thus, each charge nurse completes a questionnaire that requests information regarding the performance of staff members

with whom the charge nurse has worked during the prior year. All of the input is then assembled and used by each team supervisor to actually write the work performance review. The rating received on the performance evaluation is directly tied to the compensation an employee receives.

All staff members who serve as charge nurses receive training that specifically deals with this responsibility, particularly with the regulatory paperwork that charge nurses are responsible for completing. However, Director of New Hampshire Operations Baldini acknowledged that the supervision of employees may also be discussed as part of the training. In terms of adjusting grievances, it appears that the charge nurses do play some role in the process. For example, a collection specialist testified that if she had a problem in the field, she would go to the charge nurse first, and then to her team supervisor only if she “got no result from the charge nurse.” This same witness stated that she might “go months” without seeing her team supervisor because she works in the field, while her team supervisor works primarily at the Manchester facility. When working in the capacity of charge nurse, the staff member receives a pay differential of \$3 per hour.

The Employer stipulated to the supervisory status of the four collection specialists/LPNs who served as charge nurses at the time of the hearing in Case 1-RC-21895, and, based on that stipulation, the parties agreed to exclude these positions from any unit found appropriate. However, the Employer has taken a different position with respect to this classification during the course of these proceedings.

(g) Staff Nurses (RNs) (7)

Although staff nurses perform virtually all of the same duties as collection specialists and collection specialist/LPNs, the Employer hires these individuals under a separate classification that requires the possession of “current RN [state] licensure” and “job knowledge equivalent to that attained in three years of college (diploma program in Nursing).” Staff nurses (RNs) are primarily responsible for taking histories and drawing blood from donors. Thus, the duties of staff nurses are very similar to those of other employees who are involved in blood collection, i. e., collection specialists and collection specialist/LPNs. However, the Employer requires all of its registered nurses to serve as charge nurses. Thus, staff nurses spend “probably 90-95% of

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their time” in the charge nurse role. The Employer’s position description for staff nurses states that they will perform “all Registered Nurse (RN) duties that include, but are not limited to, charge, apheresis, community autologous, and staff training, as assigned.” In addition, and in contrast to other collection specialists, staff nurses are expected to “educate donors on the donation process and blood

use. ”

The Employer stipulated to the professional status of the eight staff nurses it employed at the time of the hearing in Case 1-RC-21895. Based on that stipulation, and because the Employer and the Petitioner were proposing non-professional units, the parties agreed to exclude registered nurses from any unit found appropriate. However, the Employer has taken a different position with respect to this classification during the course of these proceedings.

B. The Law

The Board's procedure for determining an appropriate unit under Section 9(b) is to first examine the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different

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from the alternative proposals of the parties. See, e.g., *Overnite Transportation Co.* There is nothing in the statute requiring that the unit for bargaining be the **only** appropriate unit, or the **ultimate** unit, or the **most** appropriate unit; the Act requires only that the unit be "appropriate."

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Bartlett Collins Co. The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R & D* [19]

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Trucking, and *State Farm Mutual Automobile Insurance Co.* In *Faribault Clinic*, the Board held that in the health care industry, as in any other, unions are not required to organize in the most comprehensive unit available or even the most appropriate unit -- they need only select an appropriate unit.

The Employer contends that the petitioned-for-unit is not appropriate because the only appropriate unit is one that includes all non-supervisory employees working in the Manchester location. Although all of these employees clearly share some terms and conditions of employment and may constitute an appropriate unit, as previously indicated, the Board has substantial discretion when it selects an appropriate bargaining unit. The proper test to apply here is the one that applies to a non-acute health care facility and that is the "empirical community of

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interest test." *Park Manor Care Center.* Although blood banks, in structure, operations, and staffing, are unique and quite different from other health care facilities, in *Park Manor*, the Board outlined certain general principles applicable to unit determinations in non-acute care facilities. The Board noted that, in exercising its discretion to determine appropriate units, it must steer a careful course between two undesirable extremes. If the unit is too large, it may be difficult to organize and difficult for the union to represent. If the unit is too small, it may be costly for the

employer to deal with and may even be deleterious for the union by too severely limiting its constituency and, hence, its bargaining strength. The Board's goal is to find a middle-ground position and to allocate power between labor and management by "striking the balance" in the

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appropriate place, with units that are neither too large nor too small. *Park Manor*. Based on this, it is clear that in determining the appropriate unit in this case, I must consider this balance in [24]

addition to the traditional community of interest factors.

The Board traditionally considers various community of interest factors, including past bargaining history; general working conditions, wages and benefits; degree of functional integration; common supervision; nature of employee skills, training, and function; interchange

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and contact among employees; and work location. See *Washington Palm, Inc.* When these factors are considered and balanced here, as the Board suggested be done in *Park Manor*, it is clear that the smallest appropriate unit is one that includes all of the employees who deal with collecting blood from donors, but excludes all other employees.

This leaves the question of how to deal with two classifications that were not at issue in my last Decision concerning this facility, i.e., collection specialist/LPNs (charge) and staff nurses/RNs. In contrast to positions taken at the hearing in connection with Case 1-RC-21895, the Employer now insists that charge nurses are not statutory supervisors and it also maintains that staff nurses are not professional employees under the statute.

The Board has traditionally held that registered nurses are professional employees. See *Barnabas* [26]

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Medical Center and *Centralia Convalescent Center*. The Board has made a distinction between cases where employees who happen to be registered nurses occupy a position and those where the Employer requires that employees be licensed registered nurses in order to be hired into and remain in a particular position. Thus, in *Salem Hospital*, the Board stated that "where RN licensing is not a job requirement, it must be concluded that RN education and training is not

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necessary to perform the job's functions." Here, it is quite clear that the Employer uses a separate classification for its staff nurses and that it requires the incumbents of the position to hold an RN license and to possess job knowledge equivalent to that attained in three years of college, i.e., a diploma program in Nursing. Thus, the Employer's staff nurses cannot be considered nonprofessional employees.

At this hearing the Employer took the position that the four collection specialist/LPNs (lead) are not statutory supervisors and, therefore, should be included in any unit found appropriate. [29]

Supervisory status must be analyzed under *Kentucky River Community Care*. However, as will be discussed in greater detail below, the record in this case does not contain sufficient information from which to draw a firm conclusion regarding the supervisory status of charge nurses and, therefore, I have decided to allow the four collection specialist/LPNs (charge) to vote subject to challenge. As the Board noted in *Northeast Iowa Telephone Co.*, “[t]he challenge procedure is a well-established method through which the Board ensures the speedy running of [30] representation elections.”

C. Analysis

As mentioned above, no bargaining history exists for the employees at issue, so that factor cannot be considered. All of the Employer’s employees are covered by the same personnel policies, employee handbook, and benefit package. Most of the employees are hourly paid, although some of the recruitment employees are salaried and entitled to a bonus. While these factors show some community of interest between all of the Employer’s employees, I conclude that these are outweighed by the other community of interest factors.

The employees directly involved in the collection of blood or blood products, including the MUAs, share a particularly strong community of interest. They work in teams and are supervised by team leaders or compliance operation training specialists. They have a very high degree of contact and functional integration, as they are all involved in the processing of donors and collection of their blood and related products. The DCAs and MUAs, for example, do the exact same work once at a drive, although the DCAs do not drive vehicles. All of these employees work together at fixed donor sites, and they travel and work together as a team on mobile drives.

[31]

If an MUA is alone on a drive, a collection specialist can cover the MUA’s lunch break. While it is true that within this group of employees only the MUAs drive vehicles, with respect to every other aspect of their jobs, some of the other employees in this group are cross-trained and can cover for them in all that they do. In the case of the collections staff handling double red cell donations, they are in fact performing the same work at the same time.

All of these employees are required to wear badges and lab coats at drives and they share the same OSHA I classification. These employees share unique interests and concerns given their daily, intimate contact with donors and exposure to donors’ blood and other fluids. They are a distinct and homogenous group of employees whose duties and interests set them apart from the

[32]

other employees.

The recruitment employees, including the administrative assistant II, the booker, the telerecruiters, and the volunteer coordinator, have a distinctly different function, which undermines their community of interest with the employees directly involved in blood related activities. These employees are generally responsible for recruiting donors and setting up blood drives. The bulk of their work is performed in advance of the collection work. Telerecruiters, in particular, work on telephones in an office setting. They have no personal contact with donors. In contrast, the employees directly involved in blood collection work on the front lines at the fixed sites or out in the field at mobile sites. It appears that the recruitment employees have limited, if any, contact with the MUAs and the collection employees. These employees do not typically go to blood drives. On the rare occasions when they are present, it is in a customer service capacity. They do not perform any of the tasks that the MUAs, DCAs, or the collection specialists perform.

The schedulers are responsible for coordination of staffing and scheduling the employees covering the blood drives. There is no interchange between these employees and the employees directly involved in the blood collection process. The contact they have is limited to handling call-outs. The skills used by the schedulers are markedly different from the skills of employees who are directly involved in the collection of blood, and these employees are supervised directly by Director of New Hampshire Operations Baldini. The receptionists and the apheresis coordinators, like the administrative assistant II, perform largely secretarial, clerical, and administrative duties. There is no evidence of interchange with the employees who are directly involved in the collection of blood. While the apheresis coordinators do have some contact with apheresis donors when they arrive, their primary function is administrative.

The coordinator facility services-lead is not directly involved in the blood collection process. Rather, he is primarily involved in maintenance of the Employer's facility, its computers, and its vehicles. The coordinator facility services-lead can perform the driving aspect of the MUA job, if needed, but he does not do this frequently and he does not perform the other MUA job functions. While this employee may help the MUAs on occasion, he does not appear to have regular contact with the MUAs or the other collection employees. I have included the MUA/ facility assistant in the unit even though the coordinator facility services-lead provides oversight to this employee when he is performing maintenance duties. This is because, despite the nominal oversight provided by the coordinator facility services-lead, the evidence indicates that the MUA/ facility assistant is supervised separately by the team supervisor who oversees the rest of the MUAs.

IV. Conclusion

It is clear from the above that there is some functional integration among all of the Employer's non-professional positions because they are all working towards the Employer's blood drive goals. However, a bargaining unit comprised of all non-professional employees who function together as teams directly engaged in work on blood drives is an appropriate unit based on the strong community of interest these employees share. This unit is the middle-ground unit of the kind the Board discussed in *Park Manor*.

Accordingly, based on the above and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time collection specialists, collection specialist/LPNs (noncharge), mobile unit assistants, mobile unit assistant/facility assistants, technician instructors, and donor center assistants employed by the Employer at its Manchester, New Hampshire facility, but excluding all other employees, confidential employees, professional employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Region 9A, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior*

Underwear, Inc.; *NLRB v. Wyman-Gordon Co.* Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. *North Macon*

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Health Care Facility. In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before August 31, 2006. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by August 7, 2006.

/s/ Rosemary Pye

Rosemary Pye, Regional Director

First Region

National Labor Relations Board Thomas P.
O'Neill, Jr. Federal Building 10 Causeway
Street, Sixth Floor Boston, MA 02222-1072

Dated at Boston, Massachusetts
This 24th day of July, 2006.

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[1] Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

[2] The unit is described as follows: All full-time and regular part-time collection specialists, collection specialist/LPN (non-charge), mobile unit assistants, mobile unit assistant/facility assistants, technician instructors, and donor center assistants employed by the Employer at its Manchester, New Hampshire facility, but excluding all other employees, confidential employees, professional employees, guards, and supervisors as defined in the Act.

[3] While telerecruiters were referred to as telemarketers in Case 1-RC-21895, the correct title appears to be telerecruiters.

[4] The unit the Employer seeks would include all full-time and regular part-time collection specialists, collection specialist/LPNs (non-charge), collection specialist/LPNs (charge), registered nurses, mobile unit assistants, mobile unit assistant/facility assistants, technician instructors, donor center assistants, telerecruiters, bookers, administrative assistant IIs, receptionists, schedulers, volunteer coordinators, apheresis coordinators, and coordinator facility services--lead, but excluding all other employees,

confidential employees, guards, and supervisors as defined in the Act.

The Employer has since abolished two of the positions that it previously sought to include in the unit in Case 1-RC-21895, i.e., “distribution assistant” and “distribution facility assistant.” In addition, the Employer no longer seeks to include the positions of “donor recruitment representatives” or “account executives” in the unit and the parties entered into a stipulation to the exclusion of these positions from any unit found appropriate.

[5] The parties stipulated that the transcript, exhibits, and the Decision in Case 1-RC-21895 would be made a part of the record in this case. Accordingly, I have relied throughout this Decision on facts developed in the prior case to the degree that those facts have applicability here.

[6] The appropriate unit includes all full-time and regular part-time collection specialists, collection specialist/LPNs (non-charge), mobile unit assistants, mobile unit assistant/facility assistants, technician instructors, and donor center assistants employed by the Employer at its Manchester, New Hampshire facility, but excluding all other employees, confidential employees, professional employees, guards, and supervisors as defined in the Act.

[7] The parties stipulated that Baldini is a statutory supervisor.

[8] All of these individuals were stipulated to be statutory supervisors in Case 1-RC-21895.

[9] Volunteers are responsible for greeting donors and assisting them at the blood drives. They may also do some clerical work.

[10] The team supervisors are all registered nurses.

[11] While recruitment staff or the volunteer coordinator may be present at a mobile drive, generally this is not the case.

[12] The mobile donor room bus has two donor health history booths, four donor beds, and a canteen area. This vehicle is typically used when there is no place to conduct a drive inside a company or at a shopping mall. Only MUAs who possess a commercial driver’s license may operate this vehicle.

[13] The collection specialist collecting double red cell donations is responsible for the post-collection procedure for those donations.

[14] This position was erroneously referred to as “technical instructor” in Case 1-RC-21895. [15]

Phlebotomy is the act of putting the needle in the donor’s arm in order to collect the blood.

[16] When RNs serve as charge nurses, they perform the same duties and have the same responsibilities as do the collection specialist/LPNs (charge), discussed above. The testimony regarding the percentage of

time RNs spend in the charge nurse role was clear from the record; however, the portion of the record dealing with this question for LPNs was less clear.

[17] 331 NLRB 662, 663 (2000).

[18] 334 NLRB 484 (2001) (emphasis added). [19]

327 NLRB 531 (1999). [20] 163 NLRB 677

(1967). [21] 308 NLRB 131, 133 (1992). [22] 305

NLRB 872, 875, fn. 16 (1991).

[23] Supra, at 876, quoting 53 Fed.Reg. 33904, 284 NLRB at 1534.

[24] The Board also suggested that prior cases involving the type of health care facility in dispute be considered. In this regard, I note that there are numerous blood bank cases in which the Board approved limited bargaining units other than wall-to-wall units. *Sacramento Medical Foundation Blood Bank*, 220 NLRB 904 (1975); *Greene County Chapter American Red Cross*, 221 NLRB 776 (1975); and *Laboratory Corporation of America Holdings*, 341 NLRB No. 140 (2004). In *Syracuse Region Blood Center*, 302 NLRB 72, supra, the Board found a wall-to-wall unit appropriate, though the MUAs and other employees already represented were excluded from the bargaining unit by agreement. However, in that pre-*Park Manor* case, the Board applied a disparity of interest test.

[25] 314 NLRB 1122, 1126-1127 (1994).

[26] 343 NLRB No. 119, slip op. at 19 (December 16, 2004). [27]

295 NLRB 42 (1989).

[28] 333 NLRB 560 (2001).

[29] 532 U.S. 706 (2001).

[30] 341 NLRB No. 97 (April 30, 2004).

[31] While there was some evidence that the facility coordinator-lead and the distribution facility assistant help the MUAs unload and deliver forgotten supplies, this did not appear to be done on a regular basis. The MUA/facility assistant, on the other hand, did appear to assist the MUAs on a regular basis and is certified to act as an MUA, if needed, and has in fact done so. For this reason, I will include him in the unit.

[32] I will include the technician instructor in the unit because she works as a collection specialist when she is not involved in training.

[33] The *Excelsior List* may initially be used by the Regional Director to assist in determining whether there is an adequate showing of interest. The Regional Director shall make the list available to all parties to the election when and if she determines that the Petitioner has made an adequate showing of interest in the unit found appropriate.

[34] 156 NLRB 1236 (1966). [35]

394 U.S. 759 (1969). [36]

315 NLRB 359 (1994).